

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOEL D. JOSEPH

Plaintiff,

-vs-

BUFFALO NEWS, INC.

Defendant.

DEFENDANT'S LOCAL RULE
56(a)(1) STATEMENT OF
MATERIAL FACTS

Civil Action No.
17-cv-00814(FPG)

Pursuant to Local Rule 56(a)(1), Defendant Buffalo News, Inc. ("The Buffalo News" or "Defendant") sets forth the following Statement of Material Facts in support of its Motion, in the alternative, for Summary Judgment on Plaintiff's Complaint in this action:

1. Plaintiff is a resident of the State of California. *See* Complaint at ¶ 6. Plaintiff is the Chairman of an organization known as the "Made in the USA Foundation." *See* Exhibit B to Plaintiff's Complaint at 8. ¹
2. Plaintiff is a graduate of Georgetown University Law School and states he is an "experienced attorney." *See* Declaration of Joseph T. Giglia, dated February 17, 2017, ("Giglia Decl.") at Exhibit C. ²
3. The Buffalo News is a newspaper with its principal place of business in Buffalo, New York. *See* Giglia Decl. at ¶3.

¹ A copy of Plaintiff's Complaint, with exhibits, is attached to the Declaration of Heath J. Szymczak, Esq., dated August 30, 2017, as Exhibit A.

² The Declaration of Joseph T. Giglia, with exhibits, is attached to the Declaration of Heath J. Szymczak, Esq., dated August 30, 2017, as Exhibit B.

4. On August 24, 2015, Plaintiff sent an email to The Buffalo News in Buffalo, New York containing the full text of an opinion letter he claims to have authored. A copy of this email is attached to the Giglia Decl. as Exhibit A. The email was sent to “EditPage” with an email address of EditPage@buffnews.com. *Id.* The subject line of Plaintiff’s email read: “Oped: Manufacturing Tax of Zero.” *Id.* The title in bold for the submission reads as follows: “Many of the commentators say that we don’t know how to create jobs in the USA. This proposal does just that and help Buffalo’s economy.” *Id.* The end of the email lists Plaintiff’s name and association with the “Made in the USA Foundation.” *Id.*

5. Nowhere in Plaintiff’s submission email did he place any restriction on the use of his opinion letter. *Id.* Nowhere in Plaintiff’s submission email did he in any way indicate that he expected payment for the publication of his opinion letter by The Buffalo News. *Id.*

6. On September 9, 2015, The Buffalo News, by Carol Feind, Viewpoints Editor, responded to Plaintiff’s opinion letter submission by stating as follows: “I think I’ll have a spot for this in our Sunday Viewpoints section on Sept. 13. Thank you.” *Id.*

7. Plaintiff replied to Ms. Feind that same day by acknowledging as follows: “**Great. Thanks.**” *Id.* (emphasis added). Plaintiff’s reply email did not place any restriction on the use of his opinion letter. *Id.* Plaintiff’s reply email did not in any way indicate that he expected payment for the publication of his opinion letter by The Buffalo News. *Id.*

8. Two days later, on September 13, 2015, Plaintiff's opinion letter was published by The Buffalo News pursuant to Plaintiff's request and express unrestricted authorization. *Id.*; *see also* Complaint at ¶ 9.

9. On October 19, 2015, after receiving an invoice from Plaintiff, The Buffalo News emailed Plaintiff asking him upon what basis he was demanding payment for the September 13, 2015 opinion letter. A copy of this email is attached to the Giglia Decl. as Exhibit B. That same day, Plaintiff responded as follows: "***There was no express agreement***, but most newspapers pay for my columns. There certainly was not an agreement to do the column for free. Pay whatever you think is fair." *Id.* (emphasis added).

10. Four months later, on March 16, 2016, Plaintiff obtained a copyright registration for "Manufacturing Tax of Zero," listing the first date of first publication as January 20, 2015. *See* Exhibit A to the Complaint.

11. On or about July 16, 2016, Plaintiff, through counsel, sent a letter to Defendant demanding payment of \$150,000. *See* A copy of this letter is attached to the Giglia Decl. as Exhibit C.

BOND, SCHOENECK & KING, PLLC

s/ Heath J. Szymczak
Jeremy P. Oczek
Heath J. Szymczak
200 Delaware Avenue, Suite 900
Buffalo, New York 14202
Telephone: (716) 416-7000
Email: jpoczek@bsk.com
Email: hszymczak@bsk.com

**ATTORNEYS FOR DEFENDANT
BUFFALO NEWS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify all registered CM/ECF participants in this case. In addition, I hereby certify that I will have the foregoing mailed by United States Postal Service to plaintiff:

Joel D. Joseph
11693 San Vicente Blvd. #311
Los Angeles, CA 90049

s/ Heath J. Szymczak

Heath J. Szymczak, Esq.